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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/531,267

04/13/2005

Thomas Lettner

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RONALD E. GREIGG
GREIGG & GREIGG P.L.L.C.
1423 POWHATAN STREET, UNIT ONE
ALEXANDRIA, VA 22314

EXAMINER

TRIEU, THERESA

ART UNIT

PAPER NUMBER

3748

MAIL DATE

DELIVERY MODE

05/23/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/531,267	Applicant(s) LETTNER ET AL.	
	Examiner Theresa Trieu	Art Unit 3748	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 January 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 26-43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 26-43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This Office Action is responsive to the applicants' amendment filed on Jan. 23, 2008.

Claims 1-25 have been canceled. Claims 26-43 have been added. Thus, claims 26-43 are pending in this application.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

1. Claims 26, 27, 30, 31, 33, 34, 36, 37, 38, 39, 40, 41 and 42 and are rejected under 35 U.S.C. 103(a) as being unpatentable over Kracht (Publication Number DE 8811252) in view of Laskaris et al. (Laskaris) (Patent Number 5,993,183) and further in view of Yamada et al. (Yamada) (Patent Number 5,468,130).

Regarding claims 26, 30, 31, 33, 34, 36, 37 and 39-42, the modified Kracht discloses a gear pump, comprising: a housing 10, 20 encompassing a pump chamber 11; two rotating gear

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wheels 40, 50 disposed in the pump chamber 11 of the housing (10, 12),; bearing means disposed in the pump chamber (14) of the housing and supporting the two rotating gear wheels, the bearing means embodied by at least one bearing part 60, 70, 80 of the housing; wherein the at least one bearing part of the housing 10, 20 has at least one bearing journal 80, on which at least one of the gear wheels 40, 50 is radially supported; wherein the at least one bearing part of the housing 10, 20 has a wall 60, 70 disposed approximately perpendicularly to a pivot axis 43, 53 of at least one of the gear wheels 40, 50 and which forms an axial bearing of at least one of the gear wheels. However, the modified Kracht fails to disclose the two gear wheels made of sintered steel and the housing being made of lightweight aluminum having a coating of a nickel alloy.

Regarding claim 26 and 37, Laskaris discloses teaches that it is conventional in the gear pump art to utilize the two gear wheels 10, 15 being made of sintered alloy. It would have been obvious to one having ordinary skill in the gear pump art at the time the invention was made, to have utilized the sintered alloy gear wheels, as taught by Laskaris in the Kracht apparatus, since the use thereof would have improved the efficiency of the gear pump and wear resistance.

Regarding claims 26, 27, 30, 31, 33, 34, 36-42, Yamada teaches that it is conventional in the gear pump art to utilize the housing comprising lightweight aluminum and wherein the at least one bearing part of the housing being provided with a coating of a nickel alloy/ nickel-phosphorus alloy, which on its surface has an at least substantially plane microstructure (see col. 3, line 25-35). It would have been obvious to one having ordinary skill in the art at the time the invention was made, to have utilized the lightweight aluminum and nickel coating on the surface of the gearwheel, the journal bearings and the wall of the housing part, as taught by Yamada in the modified Kracht apparatus, since the use thereof would have improved wear resistance and

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since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

In re Leshin, 227 F.2d 197, 125 USPQ 416 (CCPA 1960).

2. Claims 28, 29, 32, 35 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kracht in view of Laskaris and Yamada, as applied to claim 26 above, and further in view of legal precedent.

Regarding claims 28, 29, 32, 35 and 43, the modified Kracht discloses the invention as recited above; however, the modified Kracht fails to disclose the coating being hardness-enhanced by tempering.

Regarding claims 28 and 29, a claim for an article capable of such definition must define the article by its structure and not by the process of making it. Since the claimed the coating on the surface of the gearwheel, the journal bearings and the wall of the housing parts is capable of structural definition, the patentability of the claims must be determined solely on the basis of recited structure, exclusive of process recitations. *In re Johnson*, 394 f.2D 591, 157 USPQ 620, 55 CCPA 1463. Applicants should also not that where a product by process claim is rejected over a prior art product that appears to be identical, although produced by a different process, the burden is upon the applicants to come forward with evidence establishing an obvious difference between the two. *See In re Marosi*, 218 USPQ 289 (Fed.Cir. 1983). Accordingly, the coating on the surface of the gearwheel, the journal bearings and the wall of the housing parts do not result in any different structure that shown by the applied prior art.

Prior Art

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure and consists of two patents: Aoki et al. (U.S. Patent Number 5,364,250) and Takeda et al. (Publication Number JP 62-186081), each further discloses a state of the art.

Response to Arguments

4. Applicant's arguments with respect to claims 26-43 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

6. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F.R. 1.111, including: "The reply must present arguments pointing out the specific distinctions

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believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims “define a patentable invention” without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, “The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims.” Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP §2163.06 II(A), MPEP §2163.06 and MPEP §714.02. The "disclosure" includes the claims, the specification and the drawings.

Communication

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Theresa Trieu whose telephone number is 571-272-4868. The examiner can normally be reached on Monday-Friday 8:30am- 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas E. Denion can be reached on 571-272-4859. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TT
May 14, 2008

/Theresa Trieu/
Primary Examiner, Art Unit 3748